

EXHIBIT HH

September 1, 1994

Edwin J. Gale  
First Assistant U. S. Attorney  
U.S. Attorney's Office  
10 Dorrance Street  
Providence, RI 02903

**RE: UNITED STATES OF AMERICA  
VS. HAROLD F. CHORNEY  
CA NO: 92-099P**

Dear Mr. Gale:

I am directing this correspondence to you since it is my understanding that you taken over the handling of this matter during Mr. Posner's absence. If I am mistaken in this belief, I would appreciate your forwarding this correspondence to the appropriate party.

While I understand that the trial of this case has concluded, I have recently been apprised of the existence of some information I had requested from Mr. Posner, prior to trial, in which I was told did not exist in the form for which I was looking. Specifically, on January 5, 1993, I spoke with Mr. Posner about obtaining a copy of the videotapes that I understood had been shot when the U.S. Trustee, a court-appointed examiner, the Woonsocket Police and numerous other individuals entered my client's premises and removed all of the coins and most of the documentary evidence in this case. Essentially, all of the evidence which was offered against my client, at the time of trial, which the U.S. Attorney had received from the Trustee. In response, I was provided with a very short (about 12 minutes) video, which is very garbled and "chopped up". Needless to say, there is nothing on the video tape which evidences the removal of any assets or documents.

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I have since come to learn that the entire procedure, beginning with a police briefing in the Woonsocket Police Station on August 17, 1990, through the removal of all of the assets during the night until conclusion the following day at 5:15 in the morning was, at the trustee's apparent request transcribed verbatim by Allied Court Reporters, was videotaped by two (2) separate individuals and was the subject of still photographs by three (3) separate photographers.

Mr. Posner informed me that he had Mr. Truslow of the FBI personally speak with the U.S. Trustee, Mr. Cullen, to inquire about the existence of videotapes and he was told that the only videotape in existence was the 12 minute tape I eluded to above. Additionally, I have filed a Motion for the Production of Evidence Favorable to the Accused which in paragraph 10 I ask for any and all photographs, videotapes, negatives, motor picture films or other photographic reproduction of any nature which may tend to impeach or affect the credibility of any witnesses whom the government intends to call at trial. Additionally, I contend that the statements contained in the videotape, from government witnesses John Cullen, Lee Blais and Michael Weingarten constitute statements that should have been provided to me under the Jencks Act. Please be advised that I did file a written Motion to be Provided with Jencks Act Material prior to trial, which was granted.

Additionally, I filed a Motion to Retain Rough Notes and Writings, including the electronic recordings of interviews or statements of government witnesses arguably producible to the defendant pursuant to Title 18, United States Code Section 3500, or which may be used by the defendant for impeachment purposes or to assist in cross examination pursuant to Rule 806 of the Federal Rules of Evidence.

Additionally, and I am sure Mr. Posner can confirm, that I have asked him on more than one (1) occasion to be provided with the yellow note books representing Cumberland's inventory of all of its coins and other assets. Needless to say, I was not provided with any of the foregoing, yet it seems abundantly clear that this information did, in fact exist. I have taken the liberty of

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enclosing a 43 page transcript from Allied Court Reporters which will give you the flavor of the detail to which the Trustee documented the removal of the assets. I am sure that the 12 hours of videotapes from the two (2) video-graphers, as well as the numerous still photos, which must have been taken by the three (3) photographers, would have greatly assisted us in the preparation of our defense to this case. As I am sure you are aware, through a review of the pleadings, one of the issues my client desired for me to pursue on his behalf was the subject of missing assets. I did not pursue this avenue for Mr. Chorney, due to the fact that I had no inventory of the assets and I had no other means by which to gauge the extend of the inventory or the manner in which it was packaged. I am left to speculate whether, if I had been provided with these videotapes prior to trial, I would have employed a totally different approach in the handling of this case.

The bottom line is I am requesting that you investigate this issue and obtain copies of all of the videotapes and still photos which are compiled in this case, including but not limited to the videotapes of August, 1990 to which I have eluded. I would then like to be provided with copies of these tapes and photographs and/or be allowed access to this information, so that I may have them copied. It is my very strong belief that this information should have been given to me originally, and secondly, that its production at this time may constitute new or discovered evidence sufficient to justify a new trial of this case. Secondly, I am requesting that you investigate or make inquiry as to whether there are any other videotapes or photographs or the like from any other dates concerning the Cumberland case. It is my understanding that when the Cumberland inventory was being evaluated or appraised by the Auction House Christies and an appraiser by the name of Russell Augustin, that the entire procedure was videotaped.

I would appreciate your immediate response to this correspondence. As I am sure you are aware, there is currently an appeal pending in the United States Court of Appeals for the First Circuit and time is of the essence.

Thanking you in advance for your anticipated cooperation.

Very truly yours,

Scott A. Lutes

SAL/jrlf  
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